

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

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ORDER

HIRKI BAI VS STATE OF RAJASTHAN & ORS.

S.B. CIVIL WRIT PETITION
NO.4156/2002 UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA.

DATE OF ORDER : **7th July, 2006**

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

REPORTABLE

Mr.Sandeep Shah,for the petitioner.
Mr.Rameshwar Dave, Dy.GA, for the respondents.

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BY THE COURT: -

The petitioner Hirki Bai has filed the present writ petition assailing the show cause notice dated 8.10.2002 (Annex.4) whereby her services were sought to be terminated on the ground that she did not possess the requisite educational qualification of eligibility for appointment on the post of cook. She further prayed that the respondents be directed to regularize her services as Class IV from the date of initial appointment.

As per Rajasthan Class IV Service (Recruitment and Other Service Conditions) Rules, 1963 (for short hereinafter referred as 'the Rules of 1963'), the petitioner was initially appointed on 25.8.1987 on the post of cook on temporary basis on fixed pay of Rs.286/- per month as would be evident from the schedule appended to order dated 27.9.1997 (Annex.3).

One Shankar Lal Meena filed a writ petition in representative capacity for regularization of services of all part time Class IV employees working in various Hostels under the Tribal Area Development Department, which was allowed by this Court on 3rd May, 1996 in the light of the directions given by the Hon'ble Supreme Court in SLP (Civil) No.6403/1995. The petitioner also filed writ petition before this Court being S.B. Civil Writ Petition No.582/1995 with the prayer that her services may be regularized on the post of cook and she be granted semi-permanent status on completion of two years of service and paid salary in the regular pay scale applicable to Class IV employees. The writ petition was admitted on 6th Oct., 1995 and notices were issued to the respondents. In the meantime, the Government of Rajasthan framed a scheme for regularization of all part time employees in phases, who completed 5 years of service with the respondent-department. In the first phase, all the employees who completed 5 years of service in May, 1995 were to be given appointment in regular pay scale of Class IV

employees from 15th August, 1996. The respondent no.3 (Addl. Collector (Development), District Rural Development Agency, Chittorgarh) vide order dated 17.2.1997 (Annex.3) granted regular pay scale of Rs.750-12-798-13-850-940 to the petitioner alongwith two other persons. Subsequently, an exercise was undertaken by the respondents for passing necessary orders of regularization in service of such employees, who had completed more than 5 years as on 1st May, 1995. While preparing the list of such eligible candidates, the respondents discovered that some of such employees did not even possess requisite eligibility qualification for appointment on the post of Class IV employee as per Rules of 1963. According to these rules, a person seeking appointment on the post of Class IV employee should possess qualification of V standard.

The petitioner submitted representations to the respondents stating therein that since she has been serving the respondents since 1987, the requirement of eligibility qualification should be relaxed in her case, particularly when she has acquired vast experience of the post of cook during all these years while working with the respondents. However, the respondent no.3 suddenly issued a show cause notice to the petitioner on 8.10.2002 stating therein that even though regular pay scale was granted to the petitioner, she did not possess the educational qualification requisite for regular appointment to the

post of Class IV employee. She was therefore required to show cause within 15 days as to why her services may not be terminated. It is this show cause notice dated 8.10.2002, which has been assailed by the petitioner in the present writ petition.

The respondents have contested the writ petition by filing reply. In the reply most of the averments contained in the memorandum of the writ petition have not been denied. However, it has been stated that only such persons, who fulfilled eligibility criteria as per the Rules of 1963, have been regularized. Since the petitioner did not possess the requisite educational qualification, she was not entitled to be regularized. In these circumstances, decision was taken to dispense with her services and show cause notice was rightly issued to her. On the question of relaxation of eligibility conditions, it was stated that the Rule 27 empowers the State Government to relax the requirement of age and experience only in exceptional cases, but does not provide for relaxation in educational qualification. The petitioner was, therefore, not entitled to be granted the benefit of regularization.

I have heard learned counsel for both the parties and perused the record.

Learned counsel for the petitioner has relied upon the recent judgment of this Court in S.B. Civil Writ Petition No.5997/2003 (Ramlal Vs. State of Rajasthan & Anr.) delivered

on 26th April, 2006 pertaining to the same dispute and involving the same question with regard to relaxation of eligibility qualification, although the petitioner therein was holding the post of sweeper. The learned Single Judge in the facts of the aforesaid case observed as under: -

"The petitioner is claiming appointment to a post which is at the lowest pedestal in the hierarchy of the Government servants and which is normally occupied by the persons belonging to the lowest rung of the social order. The petitioner is a member of Scheduled Caste having experience of about more than six years to work as sweeper, therefore, sufficient reason was available with the appointing authority to extend relaxation in favour of the petitioner to regularize his services as such."

Learned counsel for the petitioner also invited my attention towards another Division Bench judgment of this Court in D.B. Civil Special Appeal No.649/1999-Rajendra Singh Rao Vs. State of Rajasthan & Ors., decided on 13.4.2001 which also involved similar controversy. In that case, the appellant was served with notice after he had completed seven years of service to show cause as to why his services be not terminated on account of his not having requisite certificate of Laboratory Technician Training Course by a recognized institution. The Division Bench of this Court while following the ratio laid down by the Hon'ble Supreme Court in the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation reported in

1990(1) SCC 361, observed as under: -

"Considering in this light, Bhagwati Prasad's case (supra) lays down in no mistakable term that even if at the time of initial appointment a person lacks minimum educational qualification, but he has discharged the duties on the post for continuously a long period on which the employer has allowed him to work without demur, it makes up for lack of educational qualification and his case has to be considered in that light. It was a case where daily rated employees were working for continuously long period and the prayer for regularization was contested on the ground that some of them claiming regularization were not possessed of requisite qualification to hold the post."

Having analyzed the law laid down by the Hon'ble Supreme Court in the case of Bhagwati Prasad in the context of the facts of Rajendra Singh Rao, the Division Bench then held as under: -

"It would be harsh to consider that a person who has actually worked on the post of Lab. Technician for seven years is still not to be treated as the person having requisite training as part of qualification necessary for holding the post. There was no justification for terminating the services of the petitioner after seven years of continuous service when he has been fully equipped with requisite training and could not be considered as a person ineligible to hold the post."

In the case of Gujarat Agricultural University Vs. Rathod Labhu Bechar & Ors reported in (2001) 3 SCC 574, the issue under examination before the Hon'ble Supreme Court pertained to regularization of a large number of daily rated labourers for numerous activities working with Gujarat Agricultural University for a long period. On the question of relaxation in relation to

eligibility conditions, the Hon'ble Supreme Court observed as under: -

"27. In the light of the aforesaid decisions we now proceed to examine the proposed scheme. Under clause 1 it is proposed that all daily-wage workers, whether skilled, semi-skilled or unskilled who have completed 10 years or more of continuous service with a minimum of 240 days in each calendar year as on 31.12.1999 are to be regularized and be put in the time-scale of pay applicable to the corresponding lowest grade in the University. However, the said regularisation is subject to some conditions. Under clause 1(a) such employees are eligible only if they possess the prescribed qualifications for the post at the time of their appointment. A strong objection has been raised to this eligibility clause. The submission is, those working for a period of 10 or more years without any complaint is by itself a sufficient requisite qualification and any other rider on the facts of this case would prejudice these workers. We find merit in this submission. We have perused the qualifications referred in the aforesaid recruitment rules according to which, qualification for a peon is that he should study up to 8th standard, for operator-cum-mechanic, he should have diploma in Mechanic having sufficient knowledge of vehicle repairing, experience in automobiles or tractor dealers' workshop for two years, for chowkidar, he must be literate and have good physique. Literate is not defined. For Plumber, to have ITI Certificate.

28. We feel that daily-rate workers who have been working on the aforesaid posts for such a long number of years without complaint on these posts is a ground by itself for the relaxation of the aforesaid eligibility condition. It would not be appropriate to disqualify them on this ground for their absorption, hence, clause 1(a) needs modification to this effect.

29. In *Bhagwati Prasad V. Delhi State Mineral Development Corpn.* this Court observed: (SCC P.364, para 6)

"6. The main controversy centres round the question whether some petitioners are

possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by him. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986, ever since they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily-rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications."

30. Thus in view of their long experience, on the fact of this case, and for the posts concerned the prescribed qualification, if any, should not come in the way of their regularization. Clause 1(b) provides for the regularization of daily wagers in a phased manner to the extent of available sanctioned post."

(emphasis supplied)

Although ordinarily, the eligibility conditions in the matter of any appointment should be adhered to, but some variance therefrom would be permissible in exceptional circumstances, particularly when the State Government has been given the power to make such relaxation and it has already made such relaxation in several such similar cases in the past. It is trite law that power of relaxation should be exercised in a fair, reasonable

and objective manner and in the case like present one when the respondents themselves have granted the benefit of regular pay scale to the petitioner, their action in refusing to relax the eligibility condition should be informed of reason and logic. It is a case where the petitioner has by now completed almost two decades in the service of the respondents and that too, on the lowest post of Class IV employees (Cook) in the hierarchy of Government service. It is expected of the State Government to act like a model employer at least in a case of this nature. There is no post of by the name of Cook in the Schedule 1 appended to the Rules of 1963. In Clause (7) of Schedule 1 appended to Rule, 1963, the list to the equivalent posts sanctioned for office work in the lowest scale is given. The post of cook is equivalent to the post of peon covered under clause (7). All the posts mentioned in the entry no.3 in schedule 1 are required to be filled in 100% by way of direct recruitment and the minimum qualification for appointment to the posts referred in entry no.3 is that the incumbent must have passed Class V from a recognized school. A note given in clause (6) of schedule 1 empowers the appointing authority to relax the qualification if sufficient number of candidates in certain categories are not available. In the present case the petitioner has worked with the respondents on the post of cook for last almost two decades. Her vast experience of working on such post should now be taken to

have made up the deficiency of eligibility condition.

In view of the discussion made above, the present writ petition is allowed. The impugned show cause notice dated 8.10.2002 is quashed and set aside. The respondents are directed to consider the case of the petitioner for regularization in accordance with law and pass necessary orders within a period of three months from the date of receipt of certified copy of this judgment.

There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-